

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 23-10887

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ROBERT KLECKLEY,

Petitioner-Appellant,

*versus*

STATE OF FLORIDA,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Florida  
D.C. Docket No. 0:19-cv-62972-RKA

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Before JORDAN and NEWSOM, Circuit Judges.

BY THE COURT:

Robert Kleckley is a Florida prisoner serving a life sentence for attempted first-degree murder inflicting great bodily harm with a firearm (Count 1) and a concurrent 30-year sentence for shooting into an occupied vehicle (Count 2). The sentence for Count 2 was enhanced based on Kleckley's habitual felony offender status. His sentences were originally imposed in 2000, and in 2010, he was re-sentenced to the same sentence on Count 2. On November 27, 2019, he filed a *pro se* 28 U.S.C. § 2254 petition, raising 11 claims. Grounds 1-3 and 11 concerned his resentencing, and Grounds 4-10 concerned his original trial proceedings.

In a report and recommendation ("R&R"), a magistrate judge found that Grounds 4-10 were untimely and recommended denying Grounds 1-3 and 11 on the merits. The district court adopted the R&R, and Kleckley filed a Fed. R. Civ. P. 59(e) motion, contending that he never received the R&R. The district court granted the motion in part, and Kleckley filed objections, which the district court overruled, denying Grounds 1-3 and 11. Then, in a second Rule 59(e) motion, Kleckley argued that his resentencing resulted in a new judgment that restarted the limitations period for all of his claims.

The district court denied this motion, reasoning that the re-sentencing did not result in a new judgment, and even if it did, it only affected Count 2 and did not impact his underlying convictions, which precluded him advancing untimely challenges to any

23-10887

Order of the Court

3

alleged errors that occurred at his trial. Nonetheless, the district court granted Kleckley a certificate of appealability (“COA”) on two issues:

1. If a state resentencing court reimposes on a state prisoner the same sentence the prisoner had already been serving, without re-adjudicating him guilty on any count, do the resentencing documents constitute a “new judgment” under *Magwood v. Patterson*, 561 U.S. 320 (2010), *Patterson v. Secretary, Florida Department of Corrections*, 849 F.3d 1321 (11th Cir. 2017), and their progeny?
2. If a state resentencing court issues a new judgment as to only one of several counts—leaving the conviction and sentence for the remaining counts undisturbed—does this new judgment allow a habeas petitioner to file an otherwise untimely § 2254 petition, challenging his underlying conviction as to all the counts?

The district court did not state, however, whether Kleckley had made a substantial showing of the denial of a constitutional right. Kleckley appealed and now seeks to expand the COA.

Here, the district court’s order granted a COA on a procedural issue, without specifying the underlying constitutional issue or issues. See 28 U.S.C. § 2253(c)(2), (3); *Spencer v. United States*, 773 F.3d 1132, 1138 (11th Cir. 2014) (*en banc*). Accordingly, the district court’s grant of a COA is VACATED, and this case is hereby

REMANDED for the limited purpose of the district court reissuing its COA in compliance with *Spencer* and § 2253(c)(2). Additionally, Kleckley's motion to expand the COA is DENIED because he has failed to make a substantial showing of the denial of a constitutional right regarding Grounds 1-3 and 11. See 28 U.S.C. § 2253(c)(2).